Nos. 17-1717, 18-18

IN THE

Supreme Court of the United States

THE AMERICAN LEGION., *et al.*,

Petitioners,

v.

AMERICAN HUMANIST ASSOCIATION, *et al.*,

Respondents.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION,

Petitioner,

v.

AMERICAN HUMANIST ASSOCIATION, *et al.*,

Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF MARYLAND ELECTED OFFICIALS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF CITED AUTHORITIES iii

INTEREST OF *AMICI CURIAE* 1

INTRODUCTION AND SUMMARY OF ARGUMENT 3

ARGUMENT 6

I. The Peace Cross Is A Prominent Shared Civic Space Central To The Communal Life Of Bladensburg And Prince George's County 6

A. The Peace Cross Provides a Shared Space for the Community to Unite to Commemorate Independence Day, Memorial Day, and Veterans Day 6

B. The Peace Cross Provides a Place for Citizens to Gather After Major Tragedies 8

C. The Peace Cross Provides a Prominent Geographic Reference Point for Bladensburg Residents and Visitors 9

II. The History Of The Peace Cross Is Important To The Communal Identity Of Bladensburg And Prince George's County 11

Table of Contents

Page

III. **The Peace Cross Is An Architecturally Significant Monument And Removing It Would Deprive Bladensburg And Prince George's County Of A Historic Artistic Creation** 13

CONCLUSION 16

TABLE OF CITED AUTHORITIES

Page

CASES

Salazar v. Buono,
559 U.S. 700 (2010) 3

Van Orden v. Perry,
545 U.S. 677 3

STATUTES AND OTHER AUTHORITIES

Area Commemorations of Sept. 11, Washington Post, Sept. 11, 2004 9

County to Erect Cross for Heroes, Washington Times, June 9, 1919 11

D'Vera Cohn, *A Quiet But Vital Earth Day*, Washington Post, Apr. 18, 1991 10

Jackie Spinner, *Design near for People's Harbor Port Towns Area Can Comment on Four Architectural Proposals*, Washington Post, Nov. 29, 2007 10

Jeffrey Lyles, *Peace Cross Used to Celebrate Veterans*, Town, Gazette Community News, July 5, 2001 12

Legion Dedicates Bladensburg War Memorial Cross, Washington Post, July 13, 1925 12

Cited Authorities

Page

Lori Sears, *A Day for the Flag*, Baltimore Sun (June 12, 2003) 9

Michael E. Ruane, *Memories, Grief Endure Across Region, Services Recall Losses, Pay Tribute to Victims*, Washington Post (Sept. 12, 2006) 9

Michelle Betton, *County Dedicates Memorial to 9/11 Dead in Bladensburg*, Washington Post, Sept. 21, 2006 9

Portia Williams, *City and Town Actions*, Washington Post, July 2, 1987 ..... 6, 7

Reid Temple Grows Despite Floods, Repairs, Washington Times, Dec. 17, 2001 10

Richard Wilson, *The Bladensburg War Memorials*, Prince George's Magazine, Fall 1983 11

Robert E. Pierre, *Port Towns' Past Serving as Anchor for Communities' Future*, Washington Post, July 6, 1997 12

Ron Shaffer, *Getting Somewhere Faster*, Washington Post, Apr. 22, 1999 10

Sara Wildberger, *Cruising for a Good Cause on the Anacostia*, Washington Post, May 30, 2002 9

Cited Authorities

Page

Susan Gervasi, *Railroad Bridge Project Could Cost $61 Million*, Washington Post, Dec. 18, 2003 10

Tony Glaros, *Where We Live*, Washington Post, Aug. 21, 2014 10

Two persons hit, killed on Annapolis Road, Washington Times, Apr. 15, 1997 10

Volunteers Raise Money for Bombing Victims, Washington Times, May 7, 1995 9

William J. Ford, *Prince George's Event Honors County's Service Members on Veterans Day*, Washington Informer, Nov. 17, 2016 . . . . . 6, 7, 8

INTEREST OF *AMICI CURIAE*[1]

Amici curiae are Maryland state elected officials who have a powerful interest in this case because of the importance of the Peace Cross to the local community. As explained below, if the Peace Cross is disfigured or demolished as a result of the Fourth Circuit's decision, *amici*'s constituents will lose a tremendously important symbol of the community that is currently a gathering point for citizens and is also historically and architecturally significant.

Jim Rosapepe has been a state senator representing Prince George's County—where the Peace Cross is located—since 2007. He currently serves as Chair of the Prince George's Senate delegation and has strong ties to the area near the Peace Cross. He previously served in the Maryland House of Delegates from 1987-1997 and on the Board of Regents of the University of Maryland system from 2001-2006.

Douglas J. J. Peters is a state senator from Prince George's County who has represented Maryland's 23rd Legislative District since 2007. He currently serves as the Majority Leader of the Maryland Senate, and was the Senate Chair of the Veterans Caucus from 2011 to 2017. Senator Peters served as a Captain in the U.S.

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1. Pursuant to this Court's Rule 37.6, counsel for *amici* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici* and their counsel has made a monetary contribution intended to fund the preparation or submission of this brief. All parties have received timely notice of *amici*'s intent to file and consented to the filing of this brief.

Army Reserve and was awarded a Bronze Star Medal for meritorious service during Operation Desert Storm. Senator Peters has served as the Post Commander of both the American Legion and Veterans of Foreign Wars.

Thomas V. ("Mike") Miller, Jr. is the President of the Maryland Senate and has represented Prince George's County, where the Peace Cross is located, since 1971. He has served in the Maryland Senate since 1975, and previously served in the Maryland House of Delegates from 1971-1975.

Victor Ramirez is a state senator representing Bladensburg, where the Peace Cross is located. He is an experienced trial attorney and previously served in the Maryland House of Delegates from 2003-2011. He is the principal owner of the Law Office of Victor R. Ramirez, LLC, practicing criminal and civil rights law for the last 17 years.

William C. Smith, Jr. is a state senator representing Montgomery County since 2016. He currently serves as Chair of the Senate Veterans Caucus and as Vice-Chair of the Senate Judicial Proceedings Committee. He also serves as a Lieutenant in the United States Naval Reserve. He previously served in the Maryland House of Delegates from 2015-2016.

Ulysses Currie is a state senator from Prince George's County who has represented Maryland's 25th Legislative District since 1995. He served in the U.S. Army from 1960-63 and has been a member of the Maryland Veterans Caucus since 2004. He previously served as Chair of the Senate Budget and Taxation Committee from 2002-2012 and in the Maryland House of Delegates from 1987-1995.

Joanne C. Benson is a state senator who has represented Prince George's County since 2011. She currently serves as Vice Chair of the Prince George's Senate Delegation and previously served in the Maryland House of Delegates from 1991-2011.

Katherine A. Klausmeier is a state senator representing Baltimore County since 2003. She currently serves as the Deputy Majority Leader of the Maryland Senate and as Chair of the Senate Rules Committee. She previously served in the Maryland House of Delegates from 1995-2003.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners ably explain why certiorari is warranted in light of the serious errors of law in the Fourth Circuit's reasoning and the square conflict between the decision below and the decisions of several other circuits. *Amici* will not repeat those arguments here but instead submit this brief to offer additional context about both the present and historical significance of the Peace Cross to the local community. *See, e.g.*, *Salazar v. Buono*, 559 U.S. 700, 716 (2010) (considering "the historical meaning that the cross had attained" in determining whether it violated the Establishment Clause); *Van Orden v. Perry*, 545 U.S. 677, 702-03 (Breyer, J., concurring in judgment) (fact that it had been 40 years without a legal challenge to a Ten Commandments display "suggest[s] that the public visiting the [surrounding] grounds has considered the religious aspect of the tablets' message as part of what is a broader moral and historical message reflective of a cultural heritage").

The Peace Cross is an important public landmark that is central to the civic life of Bladensburg and Prince George's County. Since its dedication in 1925, the Peace Cross has functioned as a shared civic space—a place for local residents to come together to honor American veterans and work together for the common good. For decades, the memorial has been the site of ceremonies celebrating Independence Day, Memorial Day, and Veterans Day; it is also where citizens have gathered after tragedies such as the September 11th terrorist attacks and the Oklahoma City bombing. The events held at the memorial are not in any way partisan or sectarian, but are instead an opportunity for the entire community to come together to celebrate or mourn. The Fourth Circuit's characterization of the Peace Cross as a predominantly religious symbol that somehow endorses certain religious views over others is utterly unrecognizable to anyone who is familiar with its actual role in the community.

The history and architecture of the Peace Cross are also sources of pride within the local community. Town leaders chose to locate the monument on a prominent piece of land in what was then the center of town to honor soldiers from Prince George's County who died in World War I. The effort to build this memorial nearly failed several times due to lack of funding, but the people eventually redoubled their efforts to ensure a proper tribute to the region's fallen soldiers. This history continues to be passed down today to school groups and others as a source of civic pride.

Finally, any order to remove or disfigure the Peace Cross would also strip Prince George's County of an architecturally significant landmark. The memorial was

designed by John Joseph Earley, a noted D.C. architect who is known for his work across the country. Earley pioneered the use of concrete in architecture and helped achieve breakthroughs in durability and the use of colors and textures. The Peace Cross is a leading example of Earley's innovative techniques, and also reflects a new type of memorial design that became prominent after World War I. Indeed, its minimalist design (which differs from the intricate detail of many earlier memorials) foreshadows the art deco movement of the decades that followed. It would be a great loss to architectural history if this important piece were removed or disfigured based on one court's misguided application of the Establishment Clause.

* * *

In short, the Peace Cross provides the community with a shared civic space in which citizens can come together to celebrate special occasions, honor fallen soldiers, and work together for the common good. Destroying or removing this historically and architecturally significant memorial would not further unity among citizens of different religious creeds; to the contrary, it would deprive the local community of an invaluable asset that has been a source of civic pride for decades. This Court's intervention is warranted to correct the untenable holding of the Fourth Circuit.

ARGUMENT

I. The Peace Cross Is A Prominent Shared Civic Space Central To The Communal Life Of Bladensburg And Prince George's County.

For nearly a century, the Peace Cross has stood at the center of civic life in Bladensburg and Prince George's County as a shared public space for commemoration and reflection. Citizens from diverse cultural backgrounds and religious traditions have long gathered at the memorial site to celebrate their shared civic values, honor fallen veterans, and work together for the common good. Any suggestion that the Peace Cross serves a predominantly religious function simply disregards decades of history of how the local community views this landmark.

A. The Peace Cross Provides a Shared Space for the Community to Unite to Commemorate Independence Day, Memorial Day, and Veterans Day.

The Peace Cross is a natural gathering place for local citizens from the surrounding communities to come together to honor veterans and members of the U.S. Armed Forces. For decades, the Peace Cross has been the site of Independence Day, Memorial Day, and Veterans' Day celebrations for "[o]fficials and residents of the towns that border" it, including "Bladensburg, Colmar Manor and Cottage City." William J. Ford, *Prince George's Event Honors County's Service Members on Veterans Day*, Washington Informer, Nov. 17, 2016 ("*Prince George's Event*"); *see also* Portia Williams, *City and Town Actions*, Washington Post, July 2, 1987 ("*City and Town Actions*").

Citizens of diverse cultural backgrounds and religious traditions come together at these events to commemorate American servicemembers, especially "the honored deceased of all our nation's struggles for the preservation of freedom." The observances are not in any way partisan or parochial. They do not honor veterans of a particular race or creed, but rather "all that serve." JA 1409 (Memorial Day 2013 program).[2] As one veteran explained, "[i]t's wonderful to be able to come here each year and . . . give remembrance and thanks to those who served .... It's not a matter that I'm an African-American, but we are all Americans in this country." *Prince George's Event*, *supra*.

The Independence Day, Memorial Day, and Veterans Day events at the Peace Cross have typically featured ceremonies honoring the American flag, speeches by the Mayor of Bladensburg, placement of floral wreaths around the monument, and performances of the national anthem and taps. The events are often followed by a community lunch at the Bladensburg Fire Department. *See* JA 1417, 1445; *City and Town Actions*, *supra*. The programs and invitations are colored red, white, and blue; decorated with flags, stars, and bald eagles; and sprinkled with tributes to the various branches of the U.S. Armed Forces. *See, e.g.*, JA 89-92 (2011 Memorial Day Ceremony Program).

In stark contrast to the way Respondents have characterized the Peace Cross, the local citizens who gather at these annual events have never viewed the monument as a sectarian symbol or a tool for proselytization. In the words of a local American Legion leader, the Peace Cross

2. "JA" refers to the Joint Appendix in the Fourth Circuit.

is a memorial to Americans of "all shapes and sizes," of all religious creeds and none, who fought for their nation in battle. *See Prince George's Event*, *supra*. Simply put, the local community views the Peace Cross as a symbol of unity, not division.

Directing the Peace Cross to be disfigured or demolished would therefore have precisely the opposite effect of what the Founders intended in making America a nation where bonds of citizenship transcend differences of religion. It would deprive the citizens of Bladensburg and the surrounding areas of the shared space in which they gather to celebrate the civic commitments that unite them despite their political and religious differences. And it would disrespect the soldiers whose memories the Peace Cross was built to commemorate. The decision below bears no resemblance to the way local citizens view the Peace Cross, and this Court's intervention is needed to avoid a wholly unwarranted blow to the civic life of Bladensburg and the surrounding areas.

B. The Peace Cross Provides a Place for Citizens to Gather After Major Tragedies.

The Peace Cross has been used for more than just celebrations of national holidays. The community has also turned to the Peace Cross on many other occasions as a place to come together for the common good in the wake of local and national tragedies.

For example, in 1995, after the bombing of the federal building in Oklahoma City, Bladensburg Volunteer Firefighters gathered at the Peace Cross with their empty boots, raising donations for the victims and their families.

Passers-by filled the boots with more than $6,000 in one day. *See Volunteers Raise Money for Bombing Victims*, Washington Times, May 7, 1995.

In the years following the terrorist attacks of September 11, 2001, community members often gathered near the Cross for candlelight vigils each September to honor the dead. *See Area Commemorations of Sept. 11*, Washington Post, Sept. 11, 2004; Michael E. Ruane, *Memories, Grief Endure Across Region, Services Recall Losses, Pay Tribute to Victims*, Washington Post (Sept. 12, 2006). Eventually, in 2006, local citizens placed a new monument near the Peace Cross to honor citizens of Prince George's County who died in the attacks. Michelle Betton, *County Dedicates Memorial to 9/11 Dead in Bladensburg*, Washington Post, Sept. 21, 2006.

C. The Peace Cross Provides a Prominent Geographic Reference Point for Bladensburg Residents and Visitors.

Residents of Prince George's County have also used the Peace Cross for decades as a prominent point of geographical orientation. Though more of a functional purpose, the use of the cross as a geographical reference point is no less vital to the local community.

Directions in and around the local area are often given by reference to the location of the Peace Cross. *See, e.g.*, Lori Sears, *A Day for the Flag*, Baltimore Sun (June 12, 2003) (using the cross to identify part of a local 10K race route); Sara Wildberger, *Cruising for a Good Cause on the Anacostia*, Washington Post, May 30, 2002 (using the cross to identify the location of the Bladensburg

Waterfront Park); Ron Shaffer, *Getting Somewhere Faster*, Washington Post, Apr. 22, 1999 (using the cross as a key marker in an alternative vehicle route identified to avoid traffic); D'Vera Cohn, *A Quiet But Vital Earth Day*, Washington Post, Apr. 18, 1991 (using the cross to identify the location of a public canoe trip on the Anacostia river).

Similarly, local news outlets, when reporting on a nearby occurrence or crime, will often locate the newsworthy event relative to the Peace Cross. *See, e.g.*, Tony Glaros, *Where We Live*, Washington Post, Aug. 21, 2014 (identifying a local park); Jackie Spinner, *Design near for People's Harbor Port Towns Area Can Comment on Four Architectural Proposals*, Washington Post, Nov. 29, 2007 (identifying new residential and commercial neighborhood); Susan Gervasi, *Railroad Bridge Project Could Cost $61 Million*, Washington Post, Dec. 18, 2003 (identifying proposed railroad bridge); Reid Temple Grows *Despite Floods, Repairs*, Washington Times, Dec. 17, 2001 (identifying local African Methodist Episcopal Church); *Two persons hit, killed on Annapolis Road*, Washington Times, Apr. 15, 1997 (identifying major traffic accident).

In short, in addition to eliminating an important shared civic space, removing the Peace Cross would strip the area of a monument frequently used by locals and visitors to orient themselves and identify the location of notable events in the community.

II. The History Of The Peace Cross Is Important To The Communal Identity Of Bladensburg And Prince George's County.

Bladensburg's rich history as a port town on the Anacostia River stretches back to the colonial era, but one of the town's finest civic moments came in 1919, in the wake of a cataclysmic war. It is a moment that continues to resonate with members of the community as a testament to who they are and, despite their differences, what they value most. *See* Richard Wilson, *The Bladensburg War Memorials*, Prince George's Magazine, Fall 1983 ("*Bladensburg War Memorials*").

That year, a group of local leaders resolved to build a memorial to honor the men from Prince George's County who died in World War I. They formed a committee to raise the necessary funds. And they soon picked the perfect spot for their memorial, the former Bladensburg Port landing—the center of the town's economic and social life for much of the nineteenth century. *See County to Erect Cross for Heroes*, Washington Times, June 9, 1919.

Townspeople gathered in late September 1919 to formally dedicate the site. Mrs. William Farmer and Mrs. Martin Redman—the mothers of the first soldier and sailor to die from Prince George's County—spoke at the groundbreaking ceremony. So, too, did the Secretary of the Navy. *See Bladensburg War Memorials, supra.* Within a year, the Committee—which by then consisted mostly of mothers of fallen soldiers—had raised more than fifteen hundred dollars. Yet it was not enough to finish the memorial, and construction had halted completely by 1922. *See* National Historic Registry Application at 8.

Instead of abandoning the memorial, however, the people of Bladensburg redoubled their efforts. The local American Legion post took control of the site and accepted the solemn responsibility of completing the project. It launched a major fundraising campaign, and by 1925 its members had secured the rest of the $10,000 needed to finish the memorial. The final dedication was held in July 1925. *See Legion Dedicates Bladensburg War Memorial Cross*, Washington Post, July 13, 1925.

Over the past ninety-nine years, members of the local community remain inspired by the story of the memorial's origins—a story they often retell as a source of civic pride. *See, e.g.*, JA 1290-1293. Several decades after the dedication of the Peace Cross, one local writer emphasized that the story of the memorial's creation revealed the "voluntary spirit" and "personal fortitude" of the people of Bladensburg. *See Bladensburg War Memorials*, *supra*. More recently, Marion Hoffman, a 22-year veteran of the Bladensburg city council, said that the monument "has always denoted Bladensburg." Jeffrey Lyles, *Peace Cross Used to Celebrate Veterans*, Town, Gazette Community News, July 5, 2001. She further explained that the construction and preservation of the cross well illustrated the city's "hope for peace and the sacrifices made from all wars." *Id.*

Not surprisingly, local schools have long taken students to the memorial site on field trips to learn the story of its construction. *See, e.g.*, Robert E. Pierre, *Port Towns' Past Serving as Anchor for Communities' Future*, Washington Post, July 6, 1997; *Peace Cross Used to Celebrate Veterans*, *supra*. On those visits, students are taught the history of the Peace Cross and are given more context "about the area's rich history." *Id.*

Put simply, nearly a century after its construction, the Peace Cross is no longer just a memorial to the fallen soldiers of the First World War. Its rich history is also a source of civic pride and a testament to the character of the people of Bladensburg, for reasons that have absolutely nothing to do with a religious message or proselytization.

III. The Peace Cross Is An Architecturally Significant Monument And Removing It Would Deprive Bladensburg And Prince George's County Of A Historic Artistic Creation.

Not only does the Peace Cross play an important role in the local community but it is also significant from an architectural perspective. This is reflected by the importance of the architect who designed the it, the innovative method of its construction, and its place in the history of monuments and architecture.

The Peace Cross was designed by John Joseph Earley, a prominent architect from the Washington D.C. area. *See* National Historic Registry Application at 7. Earley is known for his works such as Meridian Park in Washington, D.C., *see* https://tinyurl.com/yavtn4xz, the Baha'i House of Worship in Wilmette Illinois, *see* https://tinyurl.com/yd9ztzry, and the Pantheon replica in Nashville, *see* https://www.loc.gov/item/tn0450/. Earley's continuing influence is reflected in the fact that his drawings and plans are now held in the Smithsonian Archives of American Art, *see* https://tinyurl.com/yb9r3bxm, and his office and studio in the Foggy Bottom neighborhood in Washington D.C. is a National Historic Landmark, *see* https://tinyurl.com/ybqv365y.

Earley's historical importance stems from his unique use of concrete that he dubbed "architectural concrete." *See* "American Concrete Institute Celebrates 100 Years of John Joseph Earley and the Earley Studio in Washington D.C," https://tinyurl.com/yalsenc7. Before Earley's innovations, architects were skeptical that concrete could be an aesthetic medium. *See* Lori Renée Aument, Experimentation in concrete: John J. Earley at Meridian Hill Park, Washington, D.C.: history, technology, and characterization of exposed aggregate concrete, at 9, *see* https://tinyurl.com/ydhspgqm.

Despite these negative perceptions, others like Earley continued to experiment with concrete because of its versatility and durability. *Id.* For example, Earley pioneered the use of exposed color aggregates, whereby the aggregate part of the concrete mix would form the exterior of the material. *Id.* at 17. Using exposed aggregates allowed for the incorporation of different colors and textures and, unlike stucco or painting, did not involve adding a separate material to change the concrete's appearance. *See generally id.* Using this technique, Earley was able to maintain the integrity of the medium of concrete and boost its aesthetic value while still taking advantage of concrete's inherent positive qualities like durability.

The Peace Cross is a leading example of Earley's "architectural concrete" technique. *See* Nat. His. App at 8. The use of concrete allowed the cross to be built both durably and cost-effectively, thereby facilitating its prominent size. *Id.* Moreover, the use of exposed colored aggregates gives the Peace Cross its aesthetic value. *Id.* As an early example of Earley's use of this technique,

the Peace Cross pre-dates some of his prominent work mentioned above and shows Earley's development of the technique. *Id.* And, by using this technique for a memorial, Earley was able to demonstrate that concrete could compete as a medium in a setting where other, more expensive and less durable materials were preferred at the time. *Id.* at 11.

Aside from its significance as an example of Earley's work, the Peace Cross is also a prominent example of a post-World War I memorial. Before World War I, war memorials often depicted individual soldiers. *Id.* at 10. Those memorials would typically feature a soldier or a local hero either at ease or ready for battle. *Id.* After World War I, memorials became less individualized, and crosses gained prominence as a symbol of fallen soldiers. *Id.* The Peace Cross is firmly rooted in this architectural tradition, and well illustrates the more general architectural trends of the time. Its relative minimalism and emphasis on size and clarity of message, as opposed to detail and complexity, foreshadow the art deco and art modern movements of the decades that followed. *Id.*

In sum, the Peace Cross is significant architecturally both because of the prominence of its designer and because it is a well-maintained example of an architectural style rooted in the context of its construction. The destruction or alteration of the Peace Cross would deprive Prince George's County, and the country, of an important example of a prominent architect's work and of a clear window into the architectural trends of the early 1920s.

CONCLUSION

Amici curiae respectfully request that the Court grant the petition for certiorari and reverse the judgment of the Fourth Circuit.

Respectfully submitted,

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